

EINSTEIN et al.
Appl. No. 10/560,723
Atty. Ref.: 3665-166
Amendment
January 8, 2009

REMARKS

Reconsideration is requested.

Claims 1, 2 and 16 are pending. Claim 1 has been allowed.

Claim 2 relates to an isolated nucleic acid encoding a polypeptide comprising SEQ ID NO: 183. No new matter has been added. The applicants submit that all amendments have been made without prejudice and solely in order to expedite allowance of this application.

The Section 101 rejection of claims 2 and 16 is obviated by the above amendments. Withdrawal of the rejection is requested.

The Section 102 rejection of claims 2 and 16 over Gish (U.S. Patent Application Publication No. 2007/0014801), is obviated by the above amendments. Claim 2 relates to an isolated nucleic acid encoding a polypeptide comprising the 18 amino acid sequence of SEQ ID NO: 183. Gish does not describe the amino acid sequence of SEQ ID NO: 183. Gish does not describe a nucleic acid encoding the amino acid sequence of SEQ ID NO: 183. Withdrawal of the Section 102 rejection is requested.

The Section 102 rejection of claims 2 and 16 over Venter (U.S. Patent No. 6,812,339), is obviated by the above amendments. Reconsideration and withdraw of the rejection are requested in view of the above and the following comments.

Claim 2 relates to an isolated nucleic acid encoding a polypeptide comprising the 18 amino acid sequence of SEQ ID NO: 183. Venter does not describe such a nucleic acid.

EINSTEIN et al.
Appl. No. 10/560,723
Atty. Ref.: 3665-166
Amendment
January 8, 2009

Specifically, the applicants submit that SEQ ID NO: 30721, which was quoted by the Examiner, does not encode a polypeptide comprising SEQ ID NO: 183. Initially, the applicants submit that SEQ ID NO: 30721, as disclosed in the Venter patent, does not contain any coding frame corresponding to SEQ ID NO: 183. In the alignment search presented by the Examiner, the antisense sequence has been used, not SEQ ID NO: 30721. Accordingly, SEQ ID NO: 30721 does not encode a polypeptide as presently claimed. Furthermore, even in the antisense orientation, the sequence comprises various coding frames, among which only one theoretically contains a sequence corresponding to a peptide comprising SEQ ID NO: 183. The claimed invention does not necessarily flow from the cited disclosure.

Further, as shown below, in this coding frame, the sequence contains a stop codon which would prevent expression of any polypeptide comprising SEQ ID NO: 183, and no upstream start codon which would allow the sequence to express a polypeptide of SEQ ID NO: 183. Accordingly, SEQ ID NO: 30721 cannot be considered as a nucleic acid "encoding a polypeptide of SEQ ID NO: 183", as presently claimed, i.e., a nucleic acid comprising a sequence coding for such a polypeptide.

The applicants further submit that the Venter patent contains more than 200,000 (two hundred thousand) sequences with no documented function or utility. The applicants believe that there is no indication in Venter that any particular sequence encodes a functional polypeptide, and the applicants submit that an ordinarily skilled person would not find in Venter any teaching of the presently claimed invention.

SEQUENCE n° 30721 of VENTER

atgttttaag ttcttgacat ttctgccaaa ttacactctg aaaagattt caatatactg 60

EINSTEIN et al.
Appl. No. 10/560,723
Atty. Ref.: 3665-166
Amendment
January 8, 2009

agcacagagt	atcctctttt	caaataaaaa	ttaaaaatttg	ttttaggga	aattacatct	120
ttccatgtgt	tgttaaccag	ctgtgtttct	ttttaagaaa	gttctggcc	gggcgcagtg	180
tctcacgcct	gtaatcccag	cactttggga	ggccgaggct	ggcgatcac	gaggtcagga	240
gatcgagacc	atcctggcta	acacggtgaa	actccgtctc	tactgaaaat	aaaaaaaaaat	300
waaaaaataa	aaaaatttagc	cagggcgtggt	ggcggttgcc	tgtagtccca	actactcggg	360
aggctgagggc	aagagaatgg	cgtgaacccg	ggaggcagag	cttgcagtga	gccaaatgg	420
tgccactgca	ctccagcctg	ggcaacagag	caagattccg	tctcaaaaaa	agaaaaagaa	480
tgttcttcac	ccaaaatata	ttggatctt	gggattaaga	aacaatctt	ttaatcaagt	540
gttttgtttt	tttttcatt	ttgttagccaa	agaaactctc	cctgatttgg	tttccatcat	600
t						601

ANTISENSE SEQUENCE

Withdrawal of the Section 102 rejection is requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned, preferably by telephone, in the event anything further is required in this regard.

EINSTEIN et al.
Appl. No. 10/560,723
Atty. Ref.: 3665-166
Amendment
January 8, 2009

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____ /B. J. Sadoff/
B. J. Sadoff
Reg. No. 36,663

BJS:
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100